IN THE HIGH COURT OF JUDICATURE AT BOMBAY
Appellate Side

Writ Petition No.4l7 of 2005

M/s Rajasthan Commercial ..petitioners
vs
Smt Shakuntala J Shah and ors.. respondents

Mr. Rajeshwar i/b Leega Apex for petitioners
Mr A K Abhyankar i/b D H Law Associates for respondent no.l
Mr. Kirit J Hakani for respondent no. 2

CORAM: A.P.SHAH J.

Dated l9.l0.2005

P.C:

l. I have heard learned counsel for the parties. I have also gone through the judgements of the trial court and the appeal bench. The appeal bench has passed a decree for possession on two counts. First, that the petitioner is a defaulter and secondly that the petitioner has unlawfully parted with possession of the suit premises in favour of the respondent no. 2 bank. As far as ground of default is concerned there is no dispute that the respondent no.l landlord had issued demand notice dated 28.8.2003 calling upon the petitioner to pay arrears of rent for the period l.l2.l982 to 3l.7.l983. After receipt of the notice the petitioner filed an application for fixation of standard rent. In the said application for fixation of standard rent, interim order was passed

directing the petitioner to deposit rent at the rate of Rs.650 per month. Though interim rent was fixed and the petitioner was directed to pay rent regularly, yet petitioner did not comply with the said order due to which the application for fixation of standard rent was rejected. The petitioner thereafter took out an application for restoration of the earlier application which was also dismissed. Against this order the petitioner has filed writ petition being Writ Petition No.2723 of l992 and the same is pending. It is an admitted position that the petitioner has not deposited the rent during the period from l987 to l994 inspite of interim order directing the petitioner to deposit the same regularly. Under section l2 of the Bombay Rent Act a tenant is required to pay the arrears of rent within one month of the notice or file standard rent application and thereafter tender amount of rent and permitted increase as also go on paying the rent and permitted increase regularly. It is an admitted position that the petitioner has not deposited the rent regularly. The case of the petitioner thus squarely falls under section l2(3)(b) of the Bombay Rent Act.

2. As far as the second ground regarding unlawful parting with the premises in favour of the

respondent no.2 bank is concerned the petitioner has not disputed that the premises are in possession of the respondent no. 2 bank. However,the defence is that the bank has forcibly taken possession of the premises. This story is disbelieved by both the courts. It was sought to be argued before me that in para l3 of the deposition the landlord has admitted that the bank has taken forcible possession of the said premises. I have checked the certified copy of the deposition and I find that no such admission was given by the landlord. In fact in para l3 the landlord has denied the suggestion that the bank took forcible possession of the suit premises. Under the circumstances no interference is called for with the judgement of the appeal court. Petition is dismissed.